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CASE NO. 91-1661

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1991

PAUL FERRIS,

Petitioner,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA, STATE OF COLORADO; RICHARD C. POND IN HIS CAPACITY AS MEMBER OF SAID BOARD AND INDIVIDUALLY; MAXINE ALBERS AND R.W. HOLMES IN THEIR RESPECTIVE CAPACITIES AS MEMBERS OF SAID BOARD AND INDIVIDUALLY.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS, DIVISION III

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

(As Stated By Petitioner)

Whether the unlawful imposition of a general property tax by legislative act of a board of county commissioners violates a citizen's right to a republican form of government as guaranteed by Article IV, Section 4 of the United States Constitution for which a citizen's right to petition for redress may not be impaired.

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COME NOW the Respondents (collectively referred to herein as "Mesa County" or "County") and request that the Court deny certiorari and the requested additional declaratory and injunctive relief.

I. STATEMENT OF JURISDICTION

Petitioner attempts to invoke jurisdiction of this Court under 28 U.S.C. § 1257.[1] Petitioner has failed to bring himself under the provisions of this statute. An allegation that a tax is illegal or contrary to state statute and in violation of rights secured under United States law must be both specifically argued and determined in the state court against the entitlement

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[1]Petition, p. 2

under United States law. Otherwise, there is no United States Supreme Court jurisdiction. Smith v. Hunter, 48 U.S. 738 (1849).

A general allegation that the governmental action complained of is contrary to the United States Constitution or laws is not sufficient. Harding v. Illinois, 196 U.S. 78 (1904). The question must be clear, based on distinct averments, and not mere formal statements implicating federal law. Norton v. Whiteside, 239 U.S. 144 (1915). In Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182 (1945) at p. 185, it was stated that,

> "it is essential to our jurisdiction . . . that there be explicit and timely insistence in the state court that a state statute, as applied, is repugnant to the federal Constitution, treaties or laws... It has long been settled that an attack upon a tax assessment or levy, such as [appellant] here made, on the ground that it infringes a taxpayer's federal rights, privileges, or immunities, will not sustain an appeal...".

Even where the request is for certiorari and not an appeal, the case may be dismissed for failure to raise the federal question. In Cardinale v. Louisiana, 394 U.S. 437 (1969),

> "... the fact emerged in oral argument that the sole federal question argued here had never been raised, preserved, or passed upon in the state courts below. It was very early established that this court will not decide federal constitutional issues raised here for the first time on review of the state court decisions. (citations omitted)."

Furthermore, this is a tax case, which, as argued below, requires exhaustion of administrative remedies to properly bring even constitutional questions before this Court. The record cited in the Petition at p. 13 as raising the question, reveals that Petitioner is relying upon the Complaint which was stricken by order of the Mesa County District Court on May 8, 1989.[2] The Brief before the Colorado Court of Appeals (reference

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[2]Record, Vol. I, pp. 129-130

made at Petition, p. 26, footnote 40) contains mere reference to federal law which would not be sufficient under the cases cited herein. Similarly, no federal law claims were made in the application for writ of certiorari from the Colorado Supreme Court. The state court decisions do not even imply reliance upon any aspect of a federal law.[3]

Petitioner has raised, for the first time, the guarantee of a republican form of government. The court will not decide such issues, even on *certiorari*, Cardinale, *supra*, p.3, at 438. The Petition does not direct the Court's attention to any place in the record where the specific question was raised. Ferris asserts that the question of a republican form of government, and the implicated private right to petition, was decided by the Court of Appeals decision.[4] A review

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[3]Petition Appendix, pp. 1a - 30a.

[4]Petition, p. 30

of the Court of Appeals decision[5] reveals no federal question was involved. 28 U.S.C. § 1257 requirements have not been met and certiorari should not be granted.

II. STATEMENT OF THE CASE

Throughout the Petition, Ferris directs the Court to both adjudicated facts and his version of the facts. Mesa County respectfully submits the following as additional facts for the Court's understanding of the case, and directly disputes certain allegations contained in the Petition.

This case was brought as a declaratory judgment action challenging the legality of an increased property tax implemented by the Mesa County Board of County Commissioners pursuant to a

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[5]Petition Appendix, pp. 1a-14a

public disclosure "truth in taxation" process under 29-1-303 12A C.R.S.[6]

A. Factual Background

In the fall of 1988, Mesa County began its budget preparations for the following fiscal year. At that time, the County had been forced to freeze all hiring, as well as lay off employees. In addition, the County had stipulated to constructing a new jail by the end of 1991 in a federal court action, Lechleiter v. Williams, *et al.* 80 M 561 (D. Colo.). The County needed to increase its revenues above the 5 1/2 percent limit of revenue increase over the preceding year revenues collected. This revenue limit appears in 29-1-301, 12A C.R.S.[7]

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[6]Petition Appendix, p. 60a *et seq.*

[7]Petition Appendix, p. 40a et seq.

In order to raise the necessary revenues the County decided to implement the "truth in taxation" procedures under

29-1-303, 12A C.R.S..[8] Under that statute, a taxing entity must give notice of and conduct two separate hearings. After each hearing, the entity must adopt appropriate resolutions. The first hearing is to decide to use the process and the second to establish the mill levy.

On September 10 and 15, 1988, the County published a Notice of Public Hearing[9] in the local newspaper advertising that a hearing would be held on September 20, 1988, regarding a proposal to increase property taxes through the procedures authorized by § 29-1-303. At the hearing, members of the public expressed their opinion and commented on

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[8]Petition Appendix, p. 60a *et seq.*

[9]Record, Exhibit 1, B

the proposal. At the conclusion of the hearing, the County adopted Resolution No. MCM 88-99,[10] whereby Mesa County indicated its intent to follow the procedures outlined in § 29-1-303.

On November 14 and 17, 1988,[11] the County published a Notice of Public Hearing advising that a second hearing would be held on November 22, 1988. The hearing was held as scheduled and after several hours of public comment and discussion, the Board voted on and announced that the hearing would be continued until 7:30 p.m., November 25, 1988. The County then published two notices of the continued hearing in the local newspaper on November 24 and November 25.[12] At the conclusion of the continued hearing on November 25, the County adopted

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[10]Record, Exhibit 1, K

[11]Record, Exhibit 1, MM

[12]Record, Exhibit 1, NN

Resolution No. MCM 88-127,[13] whereby the County approved an additional 4 mills above the 5 1/2 percent revenue cap. The increase brought the 1989 County levy to 19.502 mills, and generated an additional $2,291,529 for the County in 1989.

Ferris is a real property owner in Mesa County, Colorado. Ferris received a tax notice for taxes assessed in 1988 and due and payable in 1989. Ferris initially refused to pay approximately $268 of the taxes due, which he attributed to the additional four mill levy adopted by the County. Ferris failed or refused to seek relief through the procedures for an abatement or refund of these taxes under §§ 39-1-113[14] and 39-10-114[15], 16B C.R.S. These statutes provide administrative remedies to property owners who believe a tax

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[13]Record, Exhibit 1, OO

[14]Petition Appendix, p. 70a

[15]Petition Appendix, p. 71a

has been levied erroneously or illegally due to irregularity in levying.

B. Case Below

Ferris filed suit for injunctive and declaratory relief in state court. On November 8, 1989, the trial court held a hearing to consider plaintiff's Motion for Preliminary Injunction. At that hearing, the trial court also considered the County's "Alternative Motion for Judgment on the Pleadings and/or Summary Judgment."[16] The court repeatedly instructed Ferris to present evidence or testimony that he had exhausted his administrative remedies prior to filing suit.[17] Ferris admitted that he had not exhausted any administrative remedies but argued that such a requirement was inapplicable. The court granted the

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[16]Record, Vol. I, pp. 298-342

[17]Record, Vol. III, pp. 106-107

County's Motion for Judgment on the Pleadings and/or Summary Judgment and orally denied Ferris' Motion for Preliminary Injunction.[18] The trial court specifically found the notice of the continued hearing was adequate.[19] Ferris then made an oral motion for reconsideration of the trial court's decision.

On November 14, 1989, the trial court issued its written order granting County's Alternative Motion for Judgment on the Pleadings and/or Summary Judgment on the sole basis that Ferris had failed to exhaust his administrative remedies. The court dismissed the action with prejudice, and denied Ferris' Motion for Reconsideration.[20]

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[18]Record Vol. III, pp. 107-108, 112

[19]Petition, p. 16, quoting Record Vol. III, p. 110 at ll. 15-20

[20]Record, pp. 424-425 pp. 6 & 7

C. Legal/Factual Disputes

Ferris contends that he has proven as facts 1) notices given by the County were invalid, and 2) that both 29-1-301 and 303, 12A C.R.S. apply. The trial court ruled against Ferris, holding that 29-1-301 was inapplicable,[21] and that notice was proper or even in excess of requirements.[22]

Ferris failed to raise the issue that any rulings implicated any federal rights. Prior to this petition, Ferris has never appealed any lower court decision based on a violation of any federal rights.

Contrary to Ferris' assertions[23] the provisions of Colorado's open meetings law, § 24-6-402, 10A C.R.S.[24] (1988 Rep. Vol.), did not apply to the County

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[21]Petition Appendix, pp. 15a - 16a

[22]Petition Appendix, p. 17a

[23]Petition, p. 3, 14, 15, 20-22

[24]Petition Appendix, pp. 32a-40a

in this case. The trial court correctly so held.[25] The ruling is supported by the 1991 amendments to 24-6-401 *et seq.*, 10A C.R.S., which now specifically includes by name governmental entities such as counties and municipalities.

Ferris asserts 29-9-101, 12A C.R.S.[26] was violated.[27] He points to Commissioner Pond's testimony as indicative of a violation of the law;[28] however, the trial court ruled there was no violation of the statute,[29] and that no action was taken outside the public meeting.

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[25]Petition p. 20, and Petition, Appendix, p. 16a

[26]Petition Appendix, p. 70a

[27]Petition p. 20; statute set out at Petition Appendix 70a

[28]Petition Appendix, p. 20

[29]Petition, Appendix, p. 16a

III. ARGUMENT - REASONS FOR DENYING THE WRIT

SUMMARY OF ARGUMENT:

As shown below, Ferris has alleged no question encompassed within his stated issue which has not been decided in prior decisions of this Court against his contentions and theories. He has brought forth no theory showing the case has any factor enumerated in S.Ct. Rule 10 supporting a grant of a writ of certiorari.

Ferris has framed the question[30] as a denial of his right to a republican form of government as guaranteed by Article IV Section 4 of the United States Constitution. He attempts to raise due process and equal protection claims, but further admits those claims are "tangential".[31]

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[30]Petition, pp. i, 32

[31]Petition, p. 31

In short, Ferris asserts that a deliberated decision by a duly elected quasi-legislative body to levy a tax increase allowed by statute is not government by republican form of government. He claims[32] to state a challenge to the legality of governmental conduct and the tax as a tax, and that he has asserted a justiciable question under Pacific States Tel. & Tel. Co. v. Oregon, 223 U.S. 118 (1912).

The issue as posited by him is clearly a political question which is not subject to court review. Ferris has failed to exhaust his administrative remedies, as required under well-established law. Ferris has not brought himself within the ambit of 28 U.S.C. § 1257 because he failed to make the required explicit and timely insistence in the state courts that the state statute, as applied, is repugnant to the federal Constitution, treaties or laws. Finally, the relief he

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[32]Petition, p. 33

pretends to request on behalf of others is not his to request. Respondents also point out what Respondents believe are mis-statements of fact contained in the Petition.

Petitioner Ferris' entire Petition for Writ of Certiorari is founded on a single presumption, that the tax levy is illegal. The legality of the levy has never been adjudicated because Ferris has refused to pursue and exhaust administrative remedies provided by the state statutes.

A. PETITIONER HAS NOT BROUGHT FORTH A JUSTICIABLE QUESTION CONCERNING THE REPUBLICAN FORM OF GOVERNMENT.

The action of the respondents did not infringe upon Ferris' right to a republican form of government nor did it create a justiciable question under Pacific States Tel. & Tel. Co. v. Oregon, 223 U.S. 118 (1912).[33]

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[33]Petition, p. 33

Ferris is asserting a non-justiciable political question as did the Pacific Telephone Company. He does not claim he was "denied an opportunity to be heard as to the amount he was taxed, or that there was anything inhering in the tax or involved intrinsically in the law which violated any of (his) constitutional rights." Pacific States Telephone at 150. Ferris is challenging the political judgment of the elected board of county commissioners who decided it was necessary to raise taxes to build the federally-ordered jail. These are political, not judicial questions, which cannot be resolved by the courts. Ohio ex rel. Bryant v. Akron Metropolitan Park District, et al., 281 U.S. 74 (1930). Ferris' reliance on Minor v. Happersett, 88 U.S. 162 (1875) is misplaced. Under that case, states are allowed to establish their own parameters for participation in the republican form of government of that state. Colorado has done so through 29-1-303, which empowers the

elected board to enact mill levy increases following public comment. Petitioner has failed to show any way in which he was denied the republican form of government guaranteed under the United States Constitution. In In re Duncan, 139 U.S. 449 (1891), p. 461, the Court discussed the republican form of government and stated, "The distinguishing feature of that form is the right of the people to choose their own officers for governmental administration and pass their own laws in virtue of the legislative power reposed in representative bodies...." Ferris has failed to allege that anything different than republican government action took place.

B. PETITIONER HAS FAILED TO OVERCOME THE REQUIREMENTS OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND HAS FAILED TO PURSUE THOSE REMEDIES.

State and federal courts have determined repeatedly that exhaustion of administrative remedies requirements are constitutional. Ferris can be held to those administrative remedies because he has standing before those agencies and does not need to resort to the courts. Louisiana Land and Exploration Co. v. Pilot Petroleum Corp. 900 F.2d 816 (5th Cir. 1990), *cert. denied sub nom.* Alabama Dept. of Revenue v. Pilot Petroleum Corp., No. 90-254 (111 S.Ct. 248, 112 L.E.2D 207).

In addition to attempting to avoid administrative remedies, Ferris has requested injunctive relief.[34] Both of these contentions are clearly and distinctly disposed of in Singer Sewing Machine Co. v. Bendict, 229 U.S. 481 (1913). The court held that the predecessor to 39-10-114, 16A C.R.S., was a complete and adequate remedy against erroneous or illegal

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[34]Petition, p. 51

taxes, and that, following application to the board of county commissioners, the taxpayer would have access to an action at law in the courts. (Singer, p. 486 and 487).

The court summarized the law: "It has been held uniformly that the illegality or unconstitutionality of the state or municipal tax or imposition itself is not a ground for equitable relief in the courts of the United States" (at 485). "...even had it (special circumstances calling for equitable relief) been it would have been unavailing unless founded upon something more than the charge that no notice was given...." (at 488).

The policy consideration for implementing the doctrine is set forth in State Railroad Tax Cases, 92 U.S. 575 (1876), where it is said,

> "The policy of non-interference by the courts with the process of collecting the taxes on which the State depends for its continued existence is founded in the simple philosophy derived from the

> experience of ages, that the payment of taxes has to be enforced by a summary constringent means against a reluctant and adverse sentiment; and to do this successfully other instrumentalities and other modes of procedure are necessary than those which belong to the courts of justice."

By analogy, decisions under the Tax Injunction Act, 28 U.S.C. § 1341 indicate that the non-intervention policy bars even claims that the tax is illegal and unconstitutional e.g. Groff v. Maryland, 639 F. Supp. 568 (D.C. Md. 1986). The question is whether or not the state procedures will provide a taxpayer with the opportunity for a full hearing and judicial determination at which he may raise any and all constitutional objections to the tax (test announced in Rosewell v. La Salle Nat. Bank, 450 U.S. 503, 514 (1981 *reh den* Rosewell v. La Salle Nat. Bank, 451 U.S. 1011 (1981)). Ferris has given no reasons why he cannot avail himself of the statutory process. These cases

make clear that the remedies afforded under the Colorado abatement and refund procedures are sufficient.

McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, etc., 496 U.S. 18, 110 L.Ed. 2d 17 (1990), cited by Petitioner, does not change this result. Contrary to Ferris' argument,[35] McKesson does not give any 14th Amendment due process right to prospective relief. McKesson holds retrospective relief is sufficient.

The Colorado abatement and refund process provides an annual opportunity for individual property taxpayers[36] to have their tax assessments reviewed and retrospective relief entered. If the tax were declared illegal, the board then sitting can reduce or eliminate the levy as to all taxpayers.

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[35]Petition, p. 49

[36]Petition, p. 49

Even though annual action might be required of a petitioner until there is a determination of the underlying question, that fact alone does not mean the proffered remedy is not effective. Rosewell, *supra*, p. 21. Furthermore, to presume that a resolution would not be forthcoming and that petitioner would have to engage in repetitious action and multiple suits involving identical issues against the same defendant would be to presume that the administrative and judicial appeals are entirely unavailing. Such presumptions should not be made.

The doctrine of exhaustion of administrative remedies is well established. Ferris cites McKart v. United States, 395 U.S. 185 (1969), in support of his proposition that he does not have to go through the abatement and refund process. Nothing in this case invokes a McKart-like exception to the exhaustion doctrine as Ferris argues. This Court did not require

McKart to exhaust those remedies because all administrative remedies were closed to him. Here, administrative remedies have been and are still available (within statutes of limitation) to Ferris.

McKart also states that, "...The doctrine provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted....' Perhaps the most common application of the exhaustion doctrine is in the cases where the relevant statute provides that certain administrative procedures shall be exclusive." McKart, p. 193. A defendant may be successful in front of the administrative process and may never have to invoke court intervention. Colorado provides the statutory administrative process in 39-1-113 and 39-10-114[37] to which the petitioner has been directed.

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[37]Petition Appendix, p. 60a

Requiring Ferris to go through the abatement and refund process will provide as panapoly of remedies to him. Features of exhaustion of administrative remedies are that the administrative agency has an opportunity to review and correct its own mistakes (McKart, p. 195); and to provide findings and other information which will assist a court in deciding a question (McKart, p. 199). By not exhausting remedies, Ferris has attempted to prevent review by the Respondent Board of County Commissioners, sitting as a quasi-judicial body, of its legislative act. The Board can determine if any remedy is appropriate. Ferris even asserts[38] that the administrative procedure requirement wrongs him by giving the Board an opportunity to correct prior action if necessary[39]. Further, Ferris is not foreclosed from the courts: he can

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[38]Petition, p. 40

[39]Petition, p. 44

obtain court review if he would follow the administrative processes.

If Ferris would commence the administrative procedures[40] available to him, he would enjoy the following reviews: First, he would file a petition which the treasurer then reports to the board of county commissioners. If the treasurer's report is that the taxes have been levied erroneously or illegally, the board would abate the taxes and provide refunds of taxes paid. The board must hold a hearing before issuing such abatement or refund under 39-1-113. Since the question of the legality of the levy is clearly at issue, the Board would decide the issue.

If the abatement or refund is in excess of (now) $1,000.00, the refund is reviewed by the State Property Tax Administrator, and if rejected, may be appealed by the taxpayer to the State Board of Assessment Appeals.

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[40]Petition Appendix, p. 71a *et seq.*

If the abatement is of (now) less than $1,000, the amount, with interest, is simply refunded to the taxpayer. If the Board determines that no abatement or refund should issue, the taxpayer would go to court, under law prior to June 9, 1990. After June 9, 1990, 39-10-114.5 provides for an appeal to the State Board of Assessment Appeals, then to the State Court of Appeals.

C. NO DENIAL OF RIGHT TO PETITION

1. Petitioner has enjoyed his rights to petition.

At page 33, Ferris asserts he has been denied his right to petition, or that his right to petition has been impaired. He filed petitions and spoke at meetings.[41] He is apparently confusing the right to petition with some right to have the governing body act in accordance with the desires of the petitioner. "Neither in the First Amendment nor elsewhere in the

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[41]Petition, p. 4 and 5

Constitution is there a provision guaranteeing that all petitions for the redress of grievances will meet with success." Canfora v. Olds, 562 F.2d 363 (6th Cir. 1977) at 364. Ferris contends that the Board's failure to respond amounts to a denial of his right to petition. If a government does not respond to a petition as desired, it is clearly a political question which should be handled through the political process.

2. Alternative processes for obtaining judicial review is not unlawful. Petitioner's rights are protected. The fact Petitioner must exhaust administrative remedies where a non-taxpayer may not have to exhaust administrative remedies does not deny Petitioner access to the courts. Ferris asserts[42] that the exhaustion requirement denies his access to the courts because he, as a taxpayer, is required to exhaust those remedies, where a non-property taxpayer would have

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[42]Petition, pp. 40-43

direct access. He cites no authority supporting the claim that such distinction is unlawful. Ferris' reliance on Bounds v. Smith, 430 U.S. 817 (1977) is misplaced. Bounds does not require a single procedure for all to seek a remedy regardless of particular status (e.g. taxpayer or not). Bounds assures prisoners of facilities, not a procedure, to obtain court review of prisoner law suits.

Ferris has a means to obtain both administrative and eventual judicial review of his particular situation. Louisiana Land and Exploration Co., *supra* p. 19. He attempts to ignore remedies personal to him and claim injury to others who are not before the court, and who have not attempted to come before the court. See Argument D, *infra*, p. 31.

Equal protection under the law does not require that persons not directly affected by the law have access to remedies. If there is any illegality in the pro-

cess followed by the Board of County Commissioners, it would result in a voidable tax levy. The aggrievement is the taxation, and the person paying the tax has standing to challenge a tax and obtain refunds under the administrative procedure. Limiting a remedy to a class, such as a taxpayer, can pass equal protection muster (Louisiana Land, *supra*, p. 19) if the system protects interests (Rosewell, *supra*, p. 21). Ferris has not used the Colorado abatement and refund process and cannot demonstrate any deficiencies in the system.

It is important to note that the other question Ferris asserts has never been decided: none of the courts below have ruled that a person who is not a property taxpayer could not bring the question directly to court. Ferris must enjoy his status as a property owner/taxpayer and exhaust his administrative remedies before coming before the court. Though his

path to court may be somewhat circuitous compared to non-taxpayer's possible path, Ferris nonetheless has a means to go to court if the administrative remedies do not resolve his complaint.

D. PETITIONER HAS NO STANDING TO ASSERT CONSTITUTIONAL CLAIMS ON BEHALF OF OTHERS. Making such claims does not require that a writ issue herein.

Throughout the proceeding, Petitioner has attempted to claim representation of others, or that there is a class to which his resolution of the issue will apply. In fact, Ferris has failed to obtain certification of a class or additional plaintiffs, or otherwise establish any standing on behalf of any person except himself. In another case arising out of Colorado, concerning right to contest zoning which did not affect the appellant, this Court refused certiorari for lack of a substantial federal question. Veterans of Foreign Wars,

Post 4264 v. City of Steamboat Springs, appeal dismissed 439 U.S. 809. The state decision allowed to stand was that remedy in one "status" is sufficient. Veterans of Foreign Wars, 575 P.2d 835 (1978). The same result should enter here.

This court has consistently held there is no standing to assert claims on behalf of others. Clements v. Fashing, 457 U.S. 957, (1982) *reh. den.* 458 U.S. 1133. At p. 966, the Clements court, citing cases, restated the rules that a litigant has standing to challenge the constitutionality of a statute only insofar as it adversely affects his own rights, and "... that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the court."[43] Ferris has not alleged any exception to the doctrine

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[43]Broadrick v. Oklahoma, 413 U.S. 601, 610 (1973).

which would permit him to attempt to protect rights of others who cannot do so[44] or that others are excluded from challenging statutes,[45] nor that free speech is implicated or stated an overbreadth challenge which would similarly allow review sought on behalf of others.[46]

If Ferris, through abatement and refund, establishes that the tax is illegally levied, other taxpayers may follow through the abatement and refund process, or may use declaratory judgment to obtain their relief from the tax. Board of Assessment Appeals v. Benbrook, 735 P.2d 860 (Colo. 1987).

Whether or not the tax is illegal, Ferris has asserted a political question. All citizens of the

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[44]Diamond v. Charles, 476 U.S. 54, (1986)

[45]Quinn v. Milsap, 491 U.S. 95 (1989)

[46]Secretary of State of Maryland v. Joseph H. Munson Co., Inc., 467 U.S. 947 (1984)

County are entitled to the remedy provided for political questions: They may go to the polls and express their dissatisfaction with the government. There is, therefore, no need for Ferris to complain on their behalf of illegality of the tax or the Board's decision to levy the excess millage.

Similarly, law provides Ferris such remedies in his asserted "statuses" as "citizen/registered elector/property owner/property taxpayer."[47] Except for the electoral process, his entrèe to the system of remedies is abatement and refund. Since he cannot represent others, the fact that he has available to him a remedy establishes that he can enjoy due process and equal protection under the law. Therefore, there is no federal question to be decided under the circumstances presented by Ferris.

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[47]Petition, pp. 5, 24

IV. CONCLUSION

This case, in simplest terms, is an objection to payment of a tax by a taxpayer. State statutes provide an administrative process whereby the taxpayer can test the tax, its amount, the legality of the tax itself, and the underlying levy. Petitioner has failed to exhaust his administrative remedies, even though he has been directed to do so by the state courts. The exhaustion of administrative remedies does not deny the Petitioner any due process of the law or any matter of equal protection. The process of establishing the tax and requiring exhaustion of administrative remedies in no way implicates Petitioner's right to a republican form of government. Therefore, the Petition for Writ of Certiorari, and the request for injunctive and declaratory relief, should not enter.

Respectfully submitted this 11th day of May, 1992.

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